

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.M.JOSEPH
&
THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 21ST DAY OF JANUARY 2014/1ST MAGHA, 1935

WA.No. 34 of 2014 () IN WP(C).28073/2011

AGAINST THE JUDGMENT IN WP(C) 28073/2011 of HIGH COURT OF KERALA
DATED 03-06-2013

APPELLANTS/PETITIONERS:

1. VARGHESE ULAHANNAN,
S/O VARGHESE, VATTAKUNNEL VEEDU, MARAYAMKADU COLONY,
MADAKKATHANAM P.O., MANJALLOOR VILLAGE,
MOOVATTUPUZHA TALUK.
2. BENNY JOSEPH,
S/O OUSEPH, MARAYAMKATTIL VEEDU, MARAYAMKADU COLONY,
MADAKKATHANAM P.O., MANJALLOOR VILLAGE,
MOOVATTUPUZHA TALUK.
3. PAULOSE M.J.,
S/O OUSEPH, MARAYANKATTIL VEEDU, MARAYAMKADU COLONY,
MADAKKATHANAM P.O., MANJALLOOR VILLAGE,
MOOVATTUPUZHA TALUK.
4. DINESHAN T.G.,
S/O GOPALAN, THOTTUPURATHU VEEDU, MARAYAMKADU COLONY,
MADAKKATHANAM P.O., MANJALLOOR VILLAGE,
MOOVATTUPUZHA TALUK.
5. ANTONY V.A.,
S/O LATE ANTONY, VADAKKEVALLIYANKAL VEEDU,
MARAYAMKADU COLONY, MADAKKATHANAM P.O.,
MANJALLOOR VILLAGE, MOOVATTUPUZHA TALUK.
6. WILSON KURIAKOSE,
S/O KURIAKOSE, MANCHATHIL VEEDU, MARAYAMKADU COLONY,
MADAKKATHANAM P.O., MANJALLOOR VILLAGE,
MOOVATTUPUZHA TALUK.

7. THOMAS THOMAS,
S/O THOMAS, KOKKANDATHIL VEEDU, MARAYAMKADU COLONY,
MADAKKATHANAM P.O., MANJALLOOR VILLAGE,
MOOVATTUPUZHA TALUK.

8. ELSY BHASKARAN,
D/O BHASKARAN, KIZHAKKEKARAYIL VEEDU,
MARAYAMKADU COLONY, MADAKKATHANAM P.O.,
MANJALLOOR VILLAGE, MOOVATTUPUZHA TALUK.

BY ADVS.SRI.T.A.UNNIKRISHNAN
SRI.K.S.PRAVEEN

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY, DEPARTMENT OF REVENUE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN:695 001.

2. THE DISTRICT COLLECTOR,
CIVIL STATION, KAKKANADU, ERNAKULAM,
PIN:682 030.

3. THE REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA TALUK, MUVATTUPUZHA, PIN:686 673.

4. THE TAHSILDAR,
MUVATTUPUZHA TALUK, MUVATTUPUZHA, PIN:686 673.

5. THE VILLAGE OFFICER,
MANJALLOOR VILLAGE, KADALIKADU P.O., MUVATTUPUZHA,
PIN:686 670.

6. A.C.BINDU,
W/O V.V.VASU, OLIPARAMBIL HOUSE, AYIROOR P.O.,
PARUR, ERNAKULAM, PIN:683 594.

R1 TO R5 BY GOVERNMENT PLEADER SRI. SYAM KUMAR
R6 BY ADV. SRI.RAJU SEBASTIAN VADAKKEKKARA
R6 BY ADV. SRI.S.KRISHNA KUMAR (TRIVANDRUM)
R6 BY ADV. SRI.B.S.SWATHIKUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21-01-2014,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DSV/21/01

K.M.JOSEPH &
K. ABRAHAM MATHEW, JJ.

W.A. No. 34 OF 2014

Dated this the 21st day of January, 2014

J U D G M E N T

K.M.Joseph, J.

Appellants are the writ petitioners. They approached the learned Single Judge with the writ petition seeking the following prayers:

(i) To issue a writ of Certiorari or any other appropriate writ order or direction to call for the records leading up to Ext.P13 and to quash Ext.P13.

(ii) To issue writ of mandamus or other appropriate writ order or directions, directing the 2nd respondent to issue patta to the petitioners in respect of lands in their possession.

(iii) To award cost of these proceedings.

(iv) To grant such other or further reliefs as this Hon'ble Court deems fit to grant in the particular facts and circumstances of the case.

2. Briefly put, the case of the appellants is as follows:

The 6th respondent filed Ext.P3 complaint before the 2nd respondent stating herself as the only legal heir of her deceased father Kochola Kuttappen in whose favour patta for 2 acres of land (Plot No.101) was issued as for proceedings in L.A.90/84 in Maniyanthadam Harijan settlement Colony Manjaloor village and the same is now under encroachment and she may be granted patta in her name after evicting encroaches. She obtained Ext.P5 order in W.P.(C).16691/2011

dated 22.06.2011 which directed the 2nd respondent District Collector to dispose of Ext. P3 complaint. The 2nd respondent called for Ext.P6 report from 4th respondent Tahasildar which states that only an offer of assignment of Plot No.101 was issued in favour of Kochola Kuttappan and he died before issuing Patta. Ext.P6 further reported that all the petitioners are residing in the said property and all of them have ration cards and all the residential houses have electrical connections from the K.S.E.B. and it is practically difficult to evict the petitioners. On coming to know about Ext.P3 complaint the petitioners sent by registered post Ext.P7 petition stating their objection and also praying for disposal of Ext.P3 along with Ext.P7. Thereafter, the 2nd respondent conducted an enquiry in which he declined to receive the objections and documents handed over by the petitioners on hearing that the petitioners have no tax receipt/title deed/patta in respect the property. Aggrieved by it, the petitioners sent by registered post Ext.P9 petition to the 2nd respondent stating the fact and the objections to Ext.P3 complaint. Both Ext.P7 and P9 were received by the 2nd respondent much before Ext.P13 order which is under challenge in the above writ petition. The petitioners are residing in the property for the last 40 or more years and the same was encroached by their forefathers when these lands were forest lands before transfer to revenue department for assignment to Harijans. The 2nd respondent disposed of Ext.P3

complaint by directing the 4th respondent to evict the petitioners from the land and to issue patta to the 6th respondent. None of the objections of the petitioners were considered. Copies of documents relied on for passing Ext.P13 order is not given to petitioners. 6th respondent has raised claim in respect of the property for the first time after 27 years of offer of assignment and no satisfactory reasons are given for the delay. Offer of assignment/order of assignment not followed by issue of patta does not create valid title over the property. No patta having been issued in respect of the property in favour of Kochola Kuttappan. 6th respondent has no right or title over the property even if she is his legal heir. The 6th respondent is not a legal heir and there is no discussion or evaluation of evidence in Ext.P13 order and the same is liable to be set aside on various grounds given in the writ petition. The petitioners or their family members do not own any other land and if evicted they have no place to go. They are labourers doing coolie work for daily wages. Their children are studying in various classes in the near by schools. In the above circumstances the above writ petition is filed challenging Ext.P13 order and for interim orders till the disposal of the writ petition.

3. The learned Single Judge disposed of the writ petition with the following directions:

- i) Petitioners shall be granted three months

time to vacate the premises in question.

ii) In the meantime it shall be open for the petitioners to approach the revenue authorities/ Government for assignment of any extent of land belonging to the Government.

iii) After the expiry of the three months period, the revenue authorities shall ensure that the petitioners are evicted from the said premises and the land allotted in favour of the 6th respondent without any further delay.

iv) The decision by the Government in regard to the pending assignment applications of the petitioners shall be considered as early as possible and not later than a period of two months from the date of receipt of a copy of this judgment. If no such application is filed so far, the petitioners shall be at liberty to file necessary application before the revenue authorities for assignment of land, in which event a decision shall be taken within three months from the date of receipt of the application.

4. Being aggrieved, the appellants are before us.

5. We heard the learned counsel for the appellants, the learned Government Pleader and the the learned counsel for the 6th respondent.

6. The learned counsel for the appellants would point out that the appellants are persons who have been occupying the land for a long period of time. It is further submitted that the learned Single Judge has erred in directing them to be vacated.

7. Per contra, the learned counsel for the party respondent would submit that there has been a long drawn out battle and it is a case where land was meant for Harijans and there is no error in the judgment of the learned Single Judge.

8. The learned Government Pleader would submit that actually the writ appeal itself is not maintainable. He would point out that actually on 02.01.2014, the appellants had moved the learned Single Judge after disposal of the writ petition and sought for three months time to vacate and what is more, the said fact is not mentioned in the writ appeal. It is further pointed out that the appellants had actually moved the revenue authorities for assignment of the very same land which is meant for Harijans.

9. Exhibit P13 is an order passed by the District Collector apparently under the Land Conservancy Act. It is found that the appellants have no right to continue there and they were directed to be evicted.

10. As regards the contention of the learned counsel for the appellants that the appellants have been directed to be evicted, we notice that actually the appellants were given three months time to vacate. Thereafter, the learned Single Judge directed that after the expiry of three months, the appellants have to be vacated. We further take notice of the fact that after disposal of the writ petition, the

appellants themselves filed an application seeking three months time to vacate and two weeks time was granted by the learned Single Judge. Therefore, apparently this is a case where request must have been made by the appellants for time to vacate, even though it is not specifically mentioned as such in the judgment. We would think that, at any rate, the conduct of the appellants in seeking further time before the learned Single Judge by three months itself shows that what they wanted was three months time to vacate. In fact, even before us, the learned counsel for the appellant Sri. K.S.Hariharaputhran would submit that there are school going children and they may be given time till 31.03.2014 to vacate.

11. As far as the prayer to issue patta is concerned, it is clearly land meant for Harijans and the appellants have absolutely no legal right to seek patta in respect of the land earmarked for assignment to Harijans. No doubt, it is their case that the land was in their possession for long period of time and they made improvements.

12. When we asked what is the source of their right, a contention was raised that they have acquired title by adverse possession. We do not see not even a whisper at all in the writ petition. Therefore, we would think that we cannot find any fault with the learned Single Judge in issuing the directions which have been granted by the learned Single Judge. However, having heard the

learned counsel for the parties and having regard to the plea made by the learned counsel for the appellants, time is extended till 28.02.2014 for the appellants to vacate.

The appeal is disposed of as above.

Sd/-
K.M.JOSEPH (JUDGE).

Sd/-
K. ABRAHAM MATHEW (JUDGE).

// True Copy //

P.A. To Judge

DSV/21/01

